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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

ROBERT RUBBOCK,

Defendant and Appellant.

B163173

(Los Angeles County Super. Ct.  
No. SA044175)

APPEAL from a judgment of the Superior Court of Los Angeles County.

Elden Fox, Judge. Affirmed.

David M. Thompson, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Joseph P. Lee and Jeffrey A. Hoskinson, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant Robert Rubbock appeals from a judgment of conviction following his plea of no contest to one count of second degree burglary (Pen. Code, § 459) and one count of forgery (Pen. Code, § 470, subd. (d)). Defendant contends the trial court erred by denying, in part, his motion to suppress evidence. We affirm.

## **FACTS AND PROCEDURAL BACKGROUND**

On January 10, 2002, defendant bought a radio from a Bose store, with a forged check in the name of Pietro Santo. On January 16, 2002, defendant attempted to return the radio for cash. When he was told he could not receive a refund until his check had cleared, he attempted to exchange the radio for more expensive equipment. He tried to pay for the difference with another forged check. When the second check was declined, defendant departed the store with the original radio.

On January 12, 2002, defendant attempted to purchase a \$4,500 stereo system at Bang and Olufsen, with a forged check in the name of Pietro Santo. When store employees could not immediately verify the check, defendant was told to return for his equipment the next week, after the check could be approved. On January 16, 2002, defendant telephoned to see if he could pick up his stereo. By this time, defendant's check had been determined to be a forgery. Beverly Hills Police Department officers were then at the store investigating the crime. At the direction of police, store employees told defendant to come into the store. Defendant arrived at the store, but did not enter; instead, he left in a car driven by Kyung Kim.

Bang and Olufsen employee Robert Wallace recognized defendant as the forger and told the police officers. The police officers put out a radio call with a description of defendant and the car. Other Beverly Hills Police Department officers stopped the car. They searched defendant and discovered his original Bang and Olufsen receipt. They searched the car and found a checkbook containing counterfeit checks in the name of

Pietro Santo and a wallet containing an obviously falsified driver's license with defendant's photograph and the name of Pietro Santo. In the trunk of the car, police found the Bose radio and its receipt. Police officers brought Wallace to the scene of defendant's detention to identify him. Wallace was driven past twice and failed to identify defendant. Police then parked the car, and Wallace spontaneously identified defendant. Defendant was arrested. Defendant made incriminating statements to the police, specifically saying: "I get the checks from a Jamaican guy named Andre. He has computers and prints up the checks." Defendant also said: "Kim drives me to stores and I write the checks. Sometimes Kim tells me what to buy. He was with me when I bought the Bose radio. He told me to buy it; he picked it out. He drove me to the Bose store and told me to return it. I guess he needed the money."

On March 15, 2002, defendant was charged by information with three counts of burglary, three counts of forgery, and possession of a completed check with the intent to defraud (Pen. Code, § 475, subd. (c)). Defendant's motion to represent himself was granted.

Defendant filed a written motion to suppress, challenging the constitutionality of his arrest and the two searches (of his person and Kim's car) conducted prior to his arrest. (Pen. Code, § 1538.5.) A hearing was held on defendant's suppression motion. The trial court granted the motion in part, suppressing from evidence the Bang and Olufsen receipt seized from defendant's pocket. The trial court denied the motion with respect to the search of the car and defendant's arrest.

Pursuant to an agreement, defendant then entered a plea of no contest to one count each of burglary and forgery. Defendant was sentenced to three years in prison, and the remaining counts were dismissed. Defendant filed a timely notice of appeal.

## **DISCUSSION**

Defendant concedes his initial detention by police was proper. He contends the trial court erred by: (1) denying his challenge to the search of the car; and (2) failing to conclude his detention was unconstitutionally prolonged.

### **I. Standard of Review**

““An appellate court’s review of a trial court’s ruling on a motion to suppress is governed by well-settled principles. [Citations.] ¶ In ruling on such a motion, the trial court (1) finds the historical facts, (2) selects the applicable rule of law, and (3) applies the latter to the former to determine whether the rule of law as applied to the established facts is or is not violated. [Citations.] “The [trial] court’s resolution of each of these inquiries is, of course, subject to appellate review.” [Citations.] ¶ The court’s resolution of the first inquiry, which involves questions of fact, is reviewed under the deferential substantial-evidence standard. [Citations.] Its decision on the second, which is a pure question of law, is scrutinized under the standard of independent review. [Citations.] Finally, its ruling on the third, which is a mixed fact-law question that is however predominantly one of law, viz., the reasonableness of the challenged police conduct, is also subject to independent review.” (*People v. Ybarra* (1991) 233 Cal.App.3d 1353, 1359.)

### **II. Search of the Car – Standing**

The trial court denied defendant’s motion to suppress the evidence found in the car on the basis that defendant lacked standing. Defendant contends this ruling was error.

Fourth Amendment rights are personal rights which may not be vicariously asserted. (*Rakas v. Illinois* (1978) 439 U.S. 128, 133-134.) The question of whether a

defendant has standing is a question of “whether the challenged search or seizure violated the Fourth Amendment rights of a criminal defendant who seeks to exclude the evidence obtained during it.” (*Id.* at p. 140.) In other words, in order to challenge a search or seizure, the defendant must first establish the search or seizure “infringed an interest of the defendant which the Fourth Amendment was designed to protect.” (*Ibid.*) This is established if “the person who claims the protection of the Amendment has a legitimate expectation of privacy in the invaded place.” (*Id.* at p. 143.) The defendant must have a subjective expectation of privacy which is objectively reasonable. (*People v. Madrid* (1992) 7 Cal.App.4th 1888, 1896.)

A defendant seeking to suppress evidence has the burden of establishing a legitimate expectation of privacy in the area searched or items seized. (*People v. Jenkins* (2000) 22 Cal.4th 900, 972.) A legitimate expectation of privacy “must have a source outside of the Fourth Amendment, either by reference to concepts of real or personal property law or to understandings that are recognized or permitted by society.” (*Rakas v. Illinois, supra*, 439 U.S. at p. 143, fn. 12.) “While property ownership is clearly a factor to be considered in determining whether an individual’s Fourth Amendment rights have been violated [citation], property rights are neither the beginning nor the end of the court’s inquiry.” (*United States v. Salvucci* (1980) 448 U.S. 83, 91.) Factors to consider include ““whether the defendant has a [property or] possessory interest in the thing seized or the place searched; whether he has the right to exclude others from that place; whether he has exhibited a subjective expectation that it would remain free from governmental invasion, whether he took normal precautions to maintain his privacy and whether he was legitimately on the premises.”” (*People v. Ybarra, supra*, 233 Cal.App.3d at p. 1360.)

A passenger in someone else’s car does not have a legitimate expectation of privacy in the car merely by virtue of being a passenger. (*Rakas v. Illinois, supra*, 439 U.S. at pp. 148-149; *People v. Jackson* (1992) 7 Cal.App.4th 1367, 1370.)

At the suppression hearing, the following facts were elicited regarding the search of the car: The car was owned by Kim's girlfriend, and driven by Kim with her permission. Defendant was riding in the front passenger seat. When police searched the car,<sup>1</sup> they discovered the checkbook and wallet wedged between the front passenger seat and the center console, pushed to the floor. Defendant did not present evidence that the checkbook and wallet were his.<sup>2</sup>

Before defendant had finished presenting his evidence at the suppression hearing, the trial court raised the issue of standing. Specifically, the trial court indicated that defendant was required to establish a reasonable expectation of privacy. Defendant did not testify; he offered no evidence regarding a possessory or property interest in the car or the items seized. Defendant also offered no evidence of a subjective expectation the items would be free from governmental invasion.

On these facts, we conclude the trial court did not err. Defendant did not meet his burden of establishing a legitimate expectation of privacy in the car or the objects seized from it. As to the car, defendant was a mere passenger with no expectation of privacy in it. The sole authority offered by defendant to dispute this conclusion is *People v. Huff* (1978) 83 Cal.App.3d 549, a case which held an automobile passenger's Fourth Amendment rights were violated by a search of the car without probable cause. *Huff* did not discuss the issue of standing and is, therefore, not authority for the proposition a passenger has standing. Moreover, *Huff* predates the United States Supreme Court's opinion in *Rakas v. Illinois, supra*, 439 U.S. at pages 148-149, which held automobile passengers do not have a reasonable expectation of privacy in the vehicles in which they are riding.

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<sup>1</sup> Police officers testified Kim consented to the search of the car. Kim testified he did not give consent. The trial court did not resolve this disputed factual issue.

<sup>2</sup> A criminal defendant can testify to possession at a suppression hearing without fear his admission of ownership may be admitted as evidence of his guilt at trial. (*United States v. Salvucci, supra*, 448 U.S. at p. 88.)

Defendant also did not establish a legitimate expectation of privacy with respect to the wallet and checkbook seized from the car. Defendant did not establish ownership or possession of the items.<sup>3</sup> Nor did he establish he took any precautions to maintain his privacy; there was no evidence the wallet and checkbook were placed in a sealed container or locked area within the car.<sup>4</sup> (Compare *People v. Jenkins*, *supra*, 22 Cal.4th at pp. 972-973 [the defendant's briefcase located in his sister's house].) We conclude defendant failed to meet his burden of establishing a legitimate expectation of privacy.

In any event, we consider the contention waived. Defendant's written suppression motion never mentioned the issue of standing. At the hearing on the suppression motion, defendant argued he had a legitimate expectation of privacy in the car, but never argued he had a legitimate expectation of privacy in the items seized. "By not arguing it below, defendant has waived the argument regarding the reasonable expectation of privacy in" the items seized from the car. (*People v. Ybarra*, *supra*, 233 Cal.App.3d at p. 1359.)

### **III. Detention – Not Unconstitutionally Prolonged**

Defendant concedes his detention was appropriate, and further concedes the detention was appropriately extended to enable Wallace to be twice driven past his

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<sup>3</sup> In his reply brief on appeal, defendant argues he "never disputed the wallet and checkbook were his." But it was defendant's burden to affirmatively establish a legitimate expectation of privacy in the items; simply failing to dispute ownership or possession is insufficient.

<sup>4</sup> Defendant suggests he "took precautions to keep the wallet and checkbook from view" by placing them between his seat and the center console. Defendant presented no evidence *he* placed the wallet and checkbook where they were discovered. Defendant does not elucidate any argument regarding an expectation of privacy in the Bose radio and receipt in the trunk. In any event, discovery of the checkbook and wallet alone provided probable cause to arrest defendant. The Bose radio and receipt would have been discovered inevitably during a search incident to arrest.

location in an attempt to identify him. Defendant argues, however, that once Wallace had failed to identify him for the second time, any further detention was unjustified.

The trial court concluded the detention was not unduly extended, given the inculpatory evidence recovered from Kim's car. Defendant does not contest the trial court's conclusion that the wallet and checkbook provided probable cause to further extend the detention. He argues, however, that such evidence should not be considered, since the search of the car was unconstitutional. As we have concluded that defendant cannot challenge the search of the car, his challenge to the detention based on the evidence recovered from the car is defeated.

### **DISPOSITION**

The judgment is affirmed.

NOT TO BE PUBLISHED.

GRIGNON, Acting P. J.

We concur:

ARMSTRONG, J.

MOSK, J.